

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-211932**DATE:** October 20, 1983**MATTER OF:** Willie Baca

DIGEST: An employee elected optional life insurance coverage but, after making proper deductions for over 9 years, the agency, through administrative error, began deducting less than was required. The employee was charged for the difference between what was collected and the correct amount. He has requested waiver of the erroneous overpayment of pay under 5 U.S.C. § 5584. Waiver is denied since he continued to be covered by optional insurance throughout the period and since he is not free from fault since he failed to examine Leave and Earnings Statements provided by the agency which would have alerted him to the error.

Mr. Willie Baca requests reconsideration of our Claims Group's denial of his application for waiver of the erroneous payments of pay in the amount of \$728. The overpayments resulted from insufficient payroll deductions for optional Federal Employees' Group Life Insurance. Since the employee was covered by optional insurance during the period and since he should have known an error in deductions had been made because he was furnished Leave and Earnings Statements showing the erroneous deductions the denial is sustained.

Mr. Baca, an employee of the United States Navy executed Standard Form 176-T electing optional (in addition to regular) Federal Employees' Group Life Insurance coverage on February 12, 1968. The payroll deduction for this insurance prior to September 25, 1977, was \$20.80. For the pay period ending October 8, 1977, his deduction for life insurance was reduced to \$11.10 because the agency erroneously reduced the charge for optional insurance. Underdeductions for optional insurance continued through May 30, 1981. Total deductions for optional insurance for the years 1977 through 1981 were only \$73 when they should have been \$801, leaving Mr. Baca with an overpayment of \$728. Apparently, these errors occurred because Mr. Baca's service

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computation date, November 14, 1944, was entered as his birth date, February 27, 1920. The error was not corrected until Mr. Baca's retirement papers were being processed. The amount owed was collected by a deduction from Mr. Baca's lump-sum leave payment.

The Navy denied Mr. Baca's request for waiver of the overpayment of pay on the grounds that he was not free from fault since an examination of his Leave and Earnings Statements would have revealed that the insurance premium had decreased without any change in coverage.

In his request for review Mr. Baca points out that he brought the error in the life insurance deduction to the Navy's attention in 1981. Although he did not notice the error between 1977 and November 1981, he brought it to the attention of the appropriate authorities when he discovered it. He also notes that he has not been shown proof that he was covered by the optional insurance during the period of underdeduction.

The Comptroller General is authorized to waive claims for overpayment of pay and allowances, other than travel and transportation expenses and allowances and relocation expenses, if collection would be "against equity and good conscience and not in the best interests of the United States." 5 U.S.C. § 5584. Such authority may not be exercised if there is "an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim." Implementing regulations provide:

"* * * Any significant unexplained increase in pay or allowances which would require a reasonable person to make inquiry concerning the correctness of his pay or allowances, ordinarily would preclude a waiver when the employee or member fails to bring the matter to the attention of appropriate officials. Waiver of overpayments of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case. * * *" 4 C.F.R. § 91.5(c)

If an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review such documents for accuracy or otherwise fails to take corrective action he is not without fault and waiver will be denied. Matter of Royals, B-188822, June 1, 1977.

The fact that the overpayments were made through administrative error does not relieve an individual of responsibility to determine the true state of affairs in connection with overpayments. It is fundamental that persons receiving money erroneously paid by a Government agency or official acquire no right to the money; such persons are bound in equity and good conscience to make restitution. Matter of Fielding, B-194594, September 27, 1979.

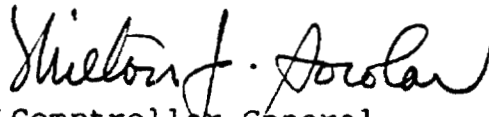
In the present case, deductions for life insurance had been made from Mr. Baca's pay in sums up to \$20.80 for the pay period covering his election on February 12, 1968, through September 24, 1977. When the deduction was reduced to \$11.10 for the pay period ending October 8, 1977, he should have questioned the fact that there was an unexplained increase in pay. Further, since the error was reflected in his Leave and Earnings Statements he should have been aware of the overpayment of pay and the reason for it.

The fact that Mr. Baca alerted the Navy to the error while he was being processed for retirement would not relieve him of his responsibility to examine his Leave and Earnings Statements at the time the initial error occurred.

We cannot say that collection of claim in this case would be against equity and good conscience. Throughout the period from February 12, 1968, until June 13, 1981, Mr. Baca's optional insurance coverage continued under the applicable regulations. Those regulations provide that optional insurance will be effective "on the date of an election" and remains in effect unless canceled, so long as the employee is eligible. 5 C.F.R. § 871.203. Optional insurance may be temporarily interrupted if the employee does not earn enough to cover its costs (5 C.F.R. § 871.201), or when the individual does not hold a qualifying position (5 C.F.R. § 871.203(b)). However, there is no provision in the

regulation which would cancel or reduce optional insurance because deductions made from an employee's salary are erroneously made in an amount less than is required for coverage. The difference between what was deducted and what should have been deducted is considered a debt of the employee to the United States and collected from him unless waiver of the debt is authorized under 5 U.S.C. § 5584. Matter of Fondren, B-186802, November 30, 1976.

Accordingly, the denial of Mr. Baca's request for waiver of his erroneous payments of pay is sustained.

for 
Comptroller General
of the United States